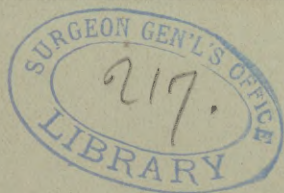


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By JOSEPH DRAPER, M. D.,
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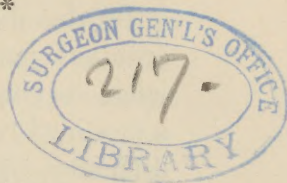
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THE RESPONSIBILITY OF THE INSANE OUTSIDE OF ASYLUMS.*

BY JOSEPH DRAPER, M. D.,

Superintendent of the Vermont Asylum for the Insane.



This paper is supplementary to one by the writer, read before this Association in 1879, entitled, "The Responsibility of the Insane in Asylums." In that I aimed only at the civil responsibility of the insane, and declared my conviction that there was more responsibility existing in the insane than the public supposes, or the common law recognizes, and that I believed it to be our duty to support that responsibility in individual cases, and in the legal sense, to the utmost extent. This assertion was made, having in view the *interests* of the individual, sustaining him in the exercise of his civil rights, so far as we are ourselves convinced he may be able to comprehend his own responsibility, and to act upon it. I likewise ventured the assertion, that practically I had learned to regard all persons as largely accountable, who had so clear an idea of their situations as to presume upon their immunity in respect to criminal acts, from the simple fact of being declared insane, and theoretically I believed the insanity of a person might always *be questioned* when

*Read at the Annual Meeting of the Association of Superintendents of American Institutions for the Insane, held at Newport, R. I., June 26, 1883.

its subject sought shelter underneath its protecting shadow. These assertions then made applied to those within asylums. The principle has since been vindicated outside of asylums in the notable trial of Guiteau.

In the discussion of this paper its application to criminal jurisprudence was touched upon, and somewhat varying opinions were expressed, but in the main, a modified responsibility was recognized. The extreme difficulty, if not impossibility, of determining the amount of actual responsibility was urged as a reason in criminal cases for clinging to the safe maxim in the jurisprudence of insanity, that a morbid condition being shown to exist in any respect in the brain of an individual, and evidenced by some abnormal mental manifestation, the responsibility should not be assumed in the legal sense in any respect. However humane and liberal such a conclusion may be, are we quite willing to rest upon it finally? Does it even in a philanthropic view satisfy fully our ideas of right, and comport altogether with the ends of justice and wisdom?

The title of the present paper will doubtless suggest these interrogatories. Is the question or fact of responsibility affected by the surroundings of the subject, whether within or outside the limits of an institution? Is not a man insane wherever he may be, if insane at all, and is he less or more responsible in reality whether he be declared so and restrained, or be suffered to go at large?

In the general outlook we are accustomed to presume all persons unrestrained of their liberty as responsible to the laws, and all those restrained in asylums as irresponsible. In point of fact, we find both premises subject to so many exceptions, that we can hardly accept the foregoing general proposition, as the rule.

At the outset I declare my own disbelief in the dogma of total irresponsibility in connection with a morbid manifestation only in some particular direction. It is to my mind a crude summary, having nothing in it satisfactory save that it tends to the side of mercy upon the bare semblance of a doubt. But even in this view, is it not open to criticism? Is it not a narrow view that looks only to the escape of the individual from a criminal act, and does not take into account also the interest of society, and in its largest scope that of the race? In point of practice, I am not sure I would go a step farther than the most decided advocate of the principle quoted. I certainly would not go a point farther than my own convictions would carry me, but that it is possible for an individual to be responsible in some things, and irresponsible in others at the same time, I do believe. For the purpose of discriminating more clearly between responsibility and irresponsibility, I would recognize a difference *practically* between insane persons and persons of unsound mind. To the former belong those laboring under actual cerebral disease—pathological cases. To the latter, those of abnormal development, in whom constitutional departures from the normal and average balance exist—congenital cases. To the former belong the maniacal, the deluded—the irresponsible; and to the latter the erratic, the fanatical and the criminal largely—the responsible. In a careful survey of men, I apprehend that those most conversant with criminals recognize in them a peculiar and characteristic psychology. As a class they constitute a departure from the great average of the race. They have a notable lack of what we call moral sense. They are less susceptible to uplifting influences than the average of mankind, and more or less incorrigible, but not lacking in intellectual power.

We can not call them at their best level-headed, but we do not think of regarding them as irresponsible to the laws, unless we find superimposed upon them a pathological condition. This class mingle with mankind at large everywhere, except while undergoing penal servitude. Another class is also mingled with the great mass, about which the question of responsibility is more puzzling. I mean those who have been thrown out of balance by actual insanity, but in whom the actual pathological condition has subsided, leaving mental cicatrices which permanently impair in some ways the normal healthful action. The result of the morbid state may be such, we will admit, that the individual may never after be able to see some existing relation in the same light as formerly. An abnormal state has permanently supplanted the normal in this respect, but in all other respects no apparent departure has resulted. We will assume that in some one respect he is unsound, and that in any criminal act, upon which this abnormality bears, he should be held irresponsible, but how should his responsibility be viewed in respect to criminal acts having no conceivable connection with the recognized permanent crook? Is responsibility in the legal sense to be surrendered in everything because of a single weak point, always assuming that actual pathological action has long since ceased? If a modified responsibility is recognized, why should not a modified accountability be insisted upon? I am well aware that these are hard questions, nevertheless they obtrude themselves, and will out, upon a close following of the subject.

In meeting the question of criminal responsibility in the line of personal practical experience, my effort has been chiefly to determine in my own mind two points: First, is the capacity of the individual equal to the

average of men? Second, is there evidence of *existing* mental disease? The social advantages and education enjoyed by the individual also come into account in their bearing upon the first inquiry, and the existence of insanity previously in the individual or his immediate ancestors, modifies or affects the latter. While it is true that an irresponsible state may exist in an individual and not be recognized until some act indicates it, or a trial clearly develops it, it is also doubtless true that the plea of insanity has sometimes been urged on slender grounds. Insanity rests on uncertain foundation when the family history affords the chief basis for its existence, important as the latter may be as a factor in the case. To be a defense, proper and valid, there should be clearly shown a departure from the normal state amounting to a delusion bearing upon the act, or such a change of character that the power of self-control is lost to that degree that ordinary temptations or provocations can not be resisted.

That even in the population of an asylum, sanity so far predominates over insanity that such institutions are in the main governable by the same regulations as apply to the sane, regulations that to be operative need to be comprehended and heeded, will, I presume not be questioned. What then shall be asserted in regard to the insane outside of asylums? Besides the regulations governing society, the pains and penalties of the law stand out as an additional restraining power. As an offset to the latter the multiplied temptations to their infraction are to be contended with or against. Does the fear of the law superimposed upon social regulations, and applying to all who enjoy unrestricted freedom counterbalance those temptations and opportunities incident to liberty?

Theory aside, is it not a fact of every-day recognition by us, that dangerous states are often modified by mere change of associations? Do we not constantly receive into our households those who in their home circles have become the prey of morbid and dangerous impulses, but who in their new relations manifest no such tendencies, and indeed by virtue of such change become convalescent from the hour of their entry into asylums. And again, have we not as often been disappointed in our anticipations of the effect of a removal of patients from asylums, sometimes those of most irritable and morbid condition, by friends to their homes, when to our surprise steady improvement and convalescence have followed? And what are the lessons taught us by these facts? Do they or do they not help us to answer the query propounded in the beginning of this paper, whether or not one may be insane under some circumstances, and not under others, or under all alike?

In my former paper I referred to the power of motives as applied to the government of the insane. I would here ask, is not susceptibility to those influences that sway mankind in general, one of the proper tests of sanity? Certainly we would regard an utter absence of such susceptibility as an evidence of insanity, and if this proposition be sustained, then may we logically inquire whether there are more or less aids to responsibility or to responsible conduct, in or out of asylums? One of our number (Dr. Godding) in discussing the Rights of the Insane, very truly says, "It is idle to contend for the rights of a dangerous lunatic at large in the community; he has no right there." So it is also useless to discuss the responsibility of those of positive homicidal or otherwise dangerous tendencies.

If impelled by irresistible violent impulses, or active delusions, no one conversant with the insane would regard them responsible either within or without asylums. Society is the responsible party in such cases, instead of the individual. I do not argue for even a modified responsibility in those laboring under active mental disorders whether acute or chronic, but that there may, and often does result a permanent impairment of mind, and a fixed condition, consistent with a modified responsibility, I think we may every day see if we do not voluntarily shut our eyes against it.

An individual may pass through a mental storm, and come out a survivor, though shorn of some of his previous characteristics; he resumes his place in society, and is restored to all his civil rights and obligations. Nobody questions his word, nor doubts his ability to make valid contracts, or to hold positions of trust and confidence.

In his walk as a man and a citizen, no distinction is made between him and his neighbors. Why then should his responsibility be doubted in the matter of making final disposition of his property, for instance? Why should the plea of insanity or incompetency be raised if some one's expectations happen to be disappointed? or why should he be shielded from legal responsibility if he be guilty of some act under the law pronounced criminal, if no fresh morbid mental disturbance can be shown to have prompted it?

A case illustrative of modified responsibility, and so adjudicated, was published in the *Journal of Mental Science*, January, 1876, and subsequently circulated as a monograph by Dr. Yellowlees of the Gartnavel Asylum, Glasgow, under the caption of "The Plea of Insanity in Cases of Murder." "The Case of Tierney" was that of a laborer in the coal mines,

who killed his fellow-workman, Campbell, in the pit. The victim was found dead beneath some stones. They had worked together for months, and were known to have sometimes quarreled about the number of hutches each filled. After the murder Tierney left the pit, and gave to different men who inquired of him why he was leaving his work at an unusual hour, different answers, some evasive and some contradictory. Arrived at the top of the shaft, he left somewhat hurriedly, although nothing noticeably peculiar was observed in his manner. He did not go directly home, but to the home of a neighbor and asked for his wife. Finding she was out at work, he then said to the woman of the house, "Where shall I hide?" The woman was afraid of him as she said "He looked excited, and had the name of not being right in his mind." She asked, "What is wrong," and understood him to say "I have put the pick in Campbell." Again she inquires, "Was he meddling with you?" to which he replies, "Of course." She assisted him to what he desired from his own house, and saw him leave. He was apprehended the same night, and when charged with the murder, asked, "Who saw me do it?" While in prison Dr. Robertson of the Glasgow City Parochial Asylum, and Dr. Yellowlees, were appointed a commission to examine him. They reported that "his manner was peculiar, reserved and suspicious, and his replies to questions were slow and evasive. He was fully aware that he was charged with murder, but denied all knowledge of the crime, and appeared quite easy and indifferent as to his serious position. His mental peculiarities were quite consistent with the occurrence of a previous prolonged attack of insanity, with occasional subsequent relapses, and were even suggestive of it, but they were unable to discover any such

mental aberration or defect as would justify them in certifying that the prisoner was insane at the time of their examinations." The prison physician concurred with Drs. Robertson and Yellowlees. At the trial it was shown that Tierney had been insane sixteen years previously, for a lengthened period, after the death of a child. His brother-in-law testified that "his insanity had been of a dangerous character, that he was in the habit of taking his razor to bed with him, and that on one occasion he burned all the clothes he could lay his hands on." The same witness also testified that "for the last fourteen years he noticed nothing in the prisoner's conduct except that he was a dull, stupid and unsociable man, whereas before this illness, he had been cheerful and sociable." There was no distinct proof of an actual mental illness either before or after the attack mentioned sixteen years before the murder. Dr. Yellowlees testified that "the peculiarities of temper and disposition noted in the prisoner, were the resultants of his former insanity." Dr. Robertson declared the same in substance but believed these "consistent with sanity." I infer by this that he meant it in his view not indicative of an actual morbid action at this time. The judge instructed the jury that "liability to sudden irritation, susceptibility to provocation, sullenness, ill-temper, silence, gloom—none of these would establish insanity. All these might exist without the deprivation of reason—that shattering of the powers of the mind which constituted insanity. But if there was a recurrence of the disease, depriving the man of the power of controlling his actions, impelling him irresistibly to commit certain actions, that excluded responsibility." The jury promptly found the prisoner "guilty of murder, but recommended him to mercy on account of his previous insanity." The final result was commutation to penal

servitude for life. The comments of Dr. Yellowlees upon this case seem to me particularly worthy of note. He regards the recognition by the jury and by the judge of the existence of partial insanity, as a great advance, and believes that by this recognition, more exact justice may be reached, accepting as the logical result a modified responsibility: so that the evil deeds of such a man must entail a modified punishment.

He justly asserts that "the acquittal of every criminal in whom any degree of mental defect could be discovered, would be both unjust and dangerous, and that the common excuse that confinement in an asylum would be the same as perpetual imprisonment, is not at all sound," and admits in concluding that "it may of course be objected, that no man can accurately gauge the accountability or self-control of his fellow-men, and that to adopt this course would give only an approximation to justice." "This," he adds, "is not perfectly true but it is the nearest approximation we can make. It recognizes at once what is needful for society, and what is just to the individual, by awarding punishment to his crime, and extending mercy to his weakness." The point I particularly note in this case is that it hinged wholly upon the non-existence of an active morbid state at the time of the murder, and of the trial. The judge ruled that the prisoner would not have been held responsible, had a recurrence of his insanity been shown.

The principle evolved in this case in its application to jurisprudence in general, I infer to be that all persons are held responsible to the laws who are not actually laboring under mental disease, unless such a degree of dementia may have resulted from previous insanity, as to render the individual incapable of comprehending his relations to society, and the necessity of obedience to human laws. Peculiarities of temper, moodiness, in-

creased susceptibility to irritations or stupidity, do not stand as evidences of irresponsibility, apart from the co-existence of hallucinations or delusions, or morbid states of exaltation or depression.

That very many of the type indicated by the case cited are to be found mingled with the sane, in the population of our own country as well as in Scotland, will hardly be questioned. How then shall we regard them? If irresponsible for crime why are they not in safe places of confinement?

A case of somewhat similar features was tried in the county court of Worcester, Mass., in 1868. The prisoner, one James E. Shepard, was indicted for the murder of his wife, which was done in cold blood, although they had not lived happily together, and she had separated from him and resisted his efforts at reconciliation. The defense was insanity, based upon the existence of epilepsy in the prisoner, up to the time he was sixteen years of age, although in the supervening period of some ten years he had been free from the malady. The family history showed insanity in his maternal grandfather and uncle, epilepsy in his mother, and habitual drunkenness in his father. The writer, at this time in temporary charge of the Worcester Hospital, was asked by the prisoner's counsel to visit the prisoner in the jail, and give an opinion as to his mental state and responsibility. The opinion given was to the effect that from the fact that the prisoner suffered through all the growing period of his life from a malady known to impair the mind, this was reason to *question* his sanity, although in his present condition there was no evidence of a morbid state.

This view at the trial was concurred in by Dr. Ray, but wholly dissented from by Dr. Earle, both of whom

with the writer examined the prisoner in the jail, and afterward conferred together upon the case. Dr. Earle emphatically declared his belief that the prisoner was fully responsible for the murder, his reasons being substantially those which were held by Drs. Robertson and Yellowlees in the case of Tierney. I thought at the time Dr. Earle's view the wrong one. In the light of the present I agree with it. The prisoner's mind may have been in a sense wanting in soundness, but he was not insane in that he was laboring under mental disease, as we here accept that state to imply.

At the opening of the defense, the State's Attorney announced his willingness to allow the prisoner to retract his plea of "not guilty" and substitute that of "guilty of murder in the second degree." This proposition was accepted, and the prisoner was sentenced to "imprisonment at hard labor in the State Prison for life, with one day of solitary confinement." He was not unmoved by the sentence, and quite broke down before leaving the court room.

Fifteen years have elapsed, and the warden of the prison writes me, under date of the 18th inst. (June, 1883), that "James E. Shepard is still here, and in apparently good health, having had so far as I can learn, no return of epilepsy during his imprisonment."

Clearly there has been nothing yet to show that Dr. Earle's judgment was at fault. If the prisoner had been held to strict accountability, it could hardly be affirmed that an insane man was executed. Under all the circumstances no fault can be reasonably found with the result. Penal servitude in this case is more just than the confinement of the prisoner in an asylum as an irresponsible person for life, or confinement for a probationary period, and then restoration to liberty, which course has been too often pursued in American practice.

In concluding this paper let us once more revert to the primary question. What is the responsibility of the insane outside of asylums? What do we gather from this brief inquiry into the matter? Excluding from consideration those whose mental operations are undeniably morbid, pathologically so, and confining ourselves to those in whom a certain unsoundness, either congenital or acquired, is found to exist—the outcome of antecedent causes, but permanent and fixed—do we assume too much if such are classed with the responsible as a rule, and held responsible to a degree corresponding to their capacity for ordinary understanding and self-control? Ought the fact of a somewhat defective mental foundation, and the possibility of the development of a morbid state upon it, to be allowed as presumptive of irresponsibility?

The defective mental constitution may claim consideration unquestionably, but is it fair to forecast the possible ultimate morbid irruption, and urge it in advance as a defense? To my mind the doctrine of insane irresponsibility has been carried too far, and has led to an increase of crime, and an inconsiderate recklessness in criminal acts. Had the infamous assassin of President Garfield been held irresponsible, and been consigned to an asylum instead of expiating his crime, I believe the precedent would have been pregnant with murderous acts.

The criminal classes fear the law which condemns to death, but laugh at or brave imprisonment. Even though the sentence be for life, it is accepted always with more or less sanguine expectation of deliverance.

In the words of Whittier, the criminal trusts

“* * That somehow good
 Will be the final goal of ill,
 To pangs of nature, sins of will,
 Defects of doubt, and taints of blood,”

and he sees not over the prison door which opens to receive him, the oft quoted inscription from Dante, and abandons not hope as it closes with its ominous clang behind him.

I recognize in all mankind the love of life as ever present, ever active. The love of personal liberty is hardly second as a boon and blessing, and in the final summing up of the queries propounded in this paper, and particularly in respect to the influence of circumstances and conditions as affecting the responsibility of a given individual, I incline to the belief that accountability is greater outside than inside of asylums in proportion as the motives acting upon the individual are more numerous, more healthful, more sustaining, and more inhibitory.

Recognizing that it is the province of another profession than ours to determine responsibility to human laws, let us not forget that it belongs to us, as conservators of human life, to see to it that no one actually laboring under disqualifying mental disease suffers unjustly, and on the other hand let us not timidly shelter our convictions behind shadows, which obscure like the mists of the morning the landmarks that constitute our sure and safe guides.

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